

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:14-CR-216-BO

FRANKLIN CANADY, JR.,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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ORDER

This cause comes before the Court on petitioner's motion pursuant to Rule 60(b) of the Federal Rules of Civil Procedure construed as a motion pursuant to 28 U.S.C. § 2255. [DE 19]. The government has moved to dismiss petitioner's motion, and petitioner has failed to respond to the motion to dismiss.

BACKGROUND

Petitioner was sentenced on November 12, 2013, in the Eastern District of Virginia to a term of 188 months' imprisonment on one count of being a felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g) and 924 as well as sixty months' imprisonment on one count of possession of a firearm in furtherance of a drug trafficking offense in violation of 18 U.S.C. § 924(c), to be served consecutively. Petitioner was further sentenced to five years of supervised release. Petitioner's term of imprisonment was subsequently reduced to a total of 120 months.

On September 18, 2014, petitioner's term of supervised release was transferred to this district. Upon a motion for revocation of supervised release filed by the United States Probation Office, this Court found that petitioner had violated the terms of his supervision and sentenced petitioner to twenty-four months' imprisonment with termination of any remaining term of

supervised release. Petitioner thereafter filed the instant motion, challenging this Court's jurisdiction to impose sentence on revocation.


DISCUSSION

Although he has not provided the Court with a notice of change of address pursuant to Local Civil Rule 83.3, it appears that petitioner is no longer being housed at FCI Bennettsville, which is the location at which he was served with the motion to dismiss as well as the Clerk of Court's letter informing him that a Rule 12 motion had been filed. *See* <https://www.bop.gov/inmateloc/> (last visited June 28, 2016). It further appears that petitioner's release date is July 22, 2016. *Id.* In light of the fact that the relief which petitioner seeks in his § 2255 motion is termination of the sentence he is now serving, and because the Court cannot determine whether petitioner received the government's motion to dismiss, the Court declines to consider the pending motions at this time.

CONCLUSION

The clerk is DIRECTED to serve petitioner at RRM Raleigh with a copy of this order and the government's motion to dismiss. Petitioner shall not later than July 15, 2016, file either a response to the government's motion to dismiss or a notification that he no longer intends to proceed with this matter and seeks dismissal without prejudice. Failure to respond to this order within the time provided shall result in this dismissal of this action without prejudice.

SO ORDERED, this 28 day of June, 2016.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE